

**REMARKS**

Claims 1-10 are pending in this application. By this Amendment, 1-10 are amended. Support for the amendments to the claims may be found, for example, in the original claims and in the specification, at page 4, lines 5-11, and page 5, lines 17-24. No new matter is added. In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

**I. Restriction Requirement**

In reply to the July 9, 2008 Restriction Requirement, Applicants provisionally elect Group I, claims 1, 2 and 6, with traverse.

The Office Action fails to establish a *prima facie* case that there is a lack of unity of invention among the Groups of claims. A lack of unity of invention may be apparent "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. *See* MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Lack of *a priori* unity of invention only exists if there is no subject matter common to all claims. *Id.* If *a priori* unity of invention exists between the claims, or, in other words, if there is subject matter common to all the claims, a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. *Id.* Furthermore, as ISPE 10.06 provides, unity of invention only needs to be determined in the first place among independent claims, and not the dependent claims.

*A priori* unity of invention exists among independent claims 1, 3, 4, 8 and 9. Independent claim 1 recites, in part, "at least 10 nucleotide motifs of SEQ ID No. 1 and/or...at least 10 nucleotide motifs of SEQ ID No. 2." Independent claims 3 and 8 recite, in part, "at least 15 nucleotide motifs of SEQ ID No. 1" (which is a subset of "at least 10

nucleotide motifs of SEQ ID No. 1," as recited in claim 1); and independent claims 4 and 9 recite, in part, "at least 20 nucleotide motifs of SEQ ID No. 2" (which is a subset of "at least 10 nucleotide motifs of SEQ ID No. 2," as recited in claim 1). Accordingly, subject matter common to all of the independent claims 1, 3, 4, 8 and 9 is "at least 10 nucleotide motifs of SEQ ID No. 1 and/or...at least 10 nucleotide motifs of SEQ ID No. 2," as recited by claim 1 (emphasis added).

Accordingly, all the claims share common subject matter and, therefore, *a priori* unity of invention exists among all the claims. Thus, for the present application, a lack of unity of invention may only be determined *a posteriori*, or in other words, after a search of the prior art has been conducted and it is established that all the elements of the independent claims are known. *See* ISPE 10.07 and 10.08.

The Office Action does not establish that each and every element of the subject matter that is common to independent claims 1, 3, 4, 8 and 9 is known in the prior art. The Office Action fails to provide Applicants with any references disclosing "at least 10 nucleotide motifs of SEQ ID No. 1 and/or...at least 10 nucleotide motifs of SEQ ID No. 2." Nowhere in any reference attached to the Office Action, including Kimmerly, which page 2 of the Office Action cites as allegedly disclosing "at least 15 nucleotide motifs of SEQ ID NO: 2," is the subject matter that is common to independent claims 1, 3, 4, 8 and 9 disclosed. Therefore, Applicants respectfully submit that lack of unity of invention has not been established, and thus a restriction requirement based on a lack of unity of invention is improper.

Reconsideration and withdrawal of the restriction requirement are respectfully requested.

**II. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of this application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



William P. Berridge  
Registration No. 30,024

Hee H. Smith  
Registration No. 57,631

WPB:HHS/mkg

Date: August 4, 2008

**OLIFF & BERRIDGE, PLC**  
**P.O. Box 320850**  
**Alexandria, Virginia 22320-4850**  
**Telephone: (703) 836-6400**

<b>DEPOSIT ACCOUNT USE AUTHORIZATION</b> Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461
----------------------------------------------------------------------------------------------------------------------------------------------------------------